



Department of the Treasury
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Date: October 22, 2014

Release Number: **201503016**

Release Date: 1/16/2015

UIL Code: 501.01-00

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Michael Seto
Manager, EO Technical

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under Section 501(c)(3) – No Protest*

cc:



Department of the Treasury
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

501.01-00

Date: August 11, 2014

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

LEGEND:

<u>State</u>	=
<u>Date 1</u>	=
<u>Date 2</u>	=
<u>Date 3</u>	=
<u>Ecommerce site</u>	=
<u>\$x</u>	=
<u>y%</u>	=

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issue

Whether you qualify for exemption as an organization described in § 501(c)(3).

Facts

You were organized under the laws of State on Date 1. You filed Form 1023, Application For Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on Date 2.

Your articles of incorporation ("articles") state that you are organized and operated exclusively

for charitable purposes within the meaning of § 501(c)(3). Your articles also state that your specific purpose is to promote the development of, public access to and adoption of your Ecommerce site solutions and online software and programs.

Your bylaws state that your specific objectives and purposes shall be to help charities, schools, and churches raise funds using your Ecommerce site.

In your application, you state that you will be an automated fundraising online marketplace, whose vendors are manufacturers, distributors, and large corporations (not just individual sellers and retailers) who will give 100% of the net profits on every order to the fundraiser, school, or charity. You state you will be the fundraising and not-for-profit version of a for-profit online enterprise, where the difference is that buyers will choose at checkout the fundraiser or charity to which they want you to donate the profits of the order. You state that you have contracted with "over hundreds" of vendors and manufacturers along with retailers to offer products on your website ranging from apparel, shoes, jewelry, tools, industrial products, books, electronics, computers, games, movies, music, health and beauty products, home furnishings, children and baby products, and sports equipment, with products added every day.

You state that you will operate as an "online charity." Your model is based on an idea where an individual's everyday shopping also becomes a way of giving. Charities, churches, and schools can have their supporters and students share with their family and friends of this one special place to go shopping on where all the revenue, less the cost of the items of their shopping, go back to the charities, churches, and schools that they support.

You state that when anyone shops on Ecommerce site, they are to select a benefiting organization from your list to receive the funds generated from that sale. Initially, as you have only several volunteers, you have limited the number of organizations for shoppers to choose from, but the selection of charities, churches, and schools will be added and made available upon validation and screening. When a customer selects an item, they will also be asked to select a beneficiary organization for which you receive all the funds generated from that sale. The customer will select the beneficiary organization on either the product page, header of the site, or at checkout. Beneficiary organizations will be selected once they are verified with the proper tax classification with the Internal Revenue Service (IRS), whether it is a charity, school, or church. You are using various validation tools to verify their status. Also, each of these organizations will be required to be active in promoting the use of Ecommerce site as a tool for their fundraising by promoting the use of the website to their supporters.

You state that you are not a service engine or a middle man between retailers and individual sellers and consumers; you are a retailer with your own direct vendors, distributors, wholesalers, and marketplace with your resellers.

You state that you are not a local store deploying a cause marketing campaign of profit sharing with a local nonprofit. You are an online marketplace representing the largest and credible manufacturers, distributors, and corporations offering the best and latest consumer products that rival the top online stores that partner with fundraisers to have their members shop and have all the profits come back to the fundraisers.

You state that unlike a retail shop, you have no paid executive officers or staff and that Ecommerce site is operated by volunteers and individuals who believe in your vision and dream. Although your directors, three in number, receive no compensation from you, your Statement of Revenues and Expenses in your application shows that during your two tax years starting at Date 3, you will expend \$x annually for other salaries and wages. Other than software and hosting cost to operate the site along with fulfillment costs, you are able to maximize the funds that will all go to charities, schools, or churches. Your revenue comes from two sources. First, while you represent that you generally will not receive any percentage from sales, you may ask organizations for which you fundraise to donate an optional y% of the funds you raised for them back to you to pay for your operations. In addition, you state that the buyer can select to give the profits to you instead of other charities if they so choose.

Law

I.R.C. § 501(c)(3) exempts from taxation corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

I.R.C. § 513(a) defines the term “unrelated trade or business” to include any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or purpose or function constituting the basis for its exemption under § 501. This section also provides that the term “unrelated trade or business” does not include any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation.

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of § 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in § 513.

In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court of the United States said, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." This rationale applies equally to any category of exempt purpose under section 501(c)(3) of the Code. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried on by a university.

In Piety, Inc. v. Commissioner, 82 T.C. 193 (1984), the court held an organization that conducted bingo games and contributed its profits to various charitable organizations was operated for the primary purpose of carrying on a trade or business and was not operated exclusively for an exempt purpose under § 501(c)(3).

In Zagfly, Inc. v. Commissioner, 105 T.C.M. (CCH) 1214 (2013), the court held that the organization was not entitled to tax-exempt status under § 501(c)(3). The organization proposed to operate a web-based broker that would sell flowers at market rates, being the price offered by other vendors participating in established networks. It would encourage customers to designate one of the charities listed on the site to receive a share of the profit from the transaction. The court held that the petitioner's primary activity, which was the operation of the site, was a sales-based business that was directly competing with commercial flower brokers and had the ultimate aim of maximizing profits in the form of commissions paid on each transaction. That is, the petitioner's primary activity was the operation of an "unrelated trade or business" by reason of which the petitioner would not be engaged primarily in activities that accomplished exempt purposes specified in § 501(c)(3).

Application of law

An organization seeking tax-exempt status under § 501(c)(3) must be organized and operated exclusively for charitable or other exempt purposes with no part of its net earnings inuring to the benefit of any private shareholder or individual. See also Treas. Reg. § 1.501(c)(3)-1(a)(1). Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes. Your articles provide that your specific purpose is to promote the development of, public access to and adoption of your Ecommerce site solutions and online software and programs. This purpose is not an enumerated exempt purpose under § 501(c)(3). Therefore, you do not meet the organizational test.

With respect to the operational test, an organization is “operated exclusively” for one or more exempt purpose only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in § 501(c)(3). See Treas. Reg. § 1.501(c)(3)-1(c)(1). You operate an internet retail shopping site, a commercial activity that does not accomplish one or more exempt purposes. The presence of a substantial non-exempt purpose will prevent tax exemption regardless of other exempt purposes. Therefore, you do qualify for exemption under § 501(c)(3). See Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945).

In addition, operating an internet retail shopping site is not a charitable activity but rather a commercial business. Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of § 501(c)(3) although it operates a trade or business as a substantial part of its activities. However, the operation of such trade or business must be in furtherance of the organization’s exempt purpose or purposes and the organization must not be organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in § 513.

Your operation of online retail shopping site is an unrelated trade or business within the meaning of § 513. This section provides that the term “unrelated trade or business” includes any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or purpose or function constituting the basis for its exemption under § 501. Here, your internet shopping site is not substantially related to your exempt purpose except for the fact that it provides you with funds to distribute to recipient charitable organizations. See Piety, Inc. v. Commissioner, 82 T.C. 193 (1984); Zagfly, Inc. v. Commissioner, 105 T.C.M. (CCH) 1214 (2013).

While an organization that is organized and operated for an exempt purpose might avoid the unrelated business income tax by meeting the requirements of one of the exceptions found under § 513, you do not meet any of these exceptions. For example, § 513(a) provides that the term “unrelated trade or business” does not include any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation. However, you do not meet this exception as the financial information you submitted with your application provides that you will expend \$x in each year for other salaries and wages.

Based on the information you provided, you are currently operated for the primary purpose of carrying on an unrelated trade or business. Because your primary purpose is the carrying on of an unrelated trade or business, you are not operated exclusively for exempt purposes specified in § 501(c)(3) and do not qualify for exemption under that section. See Treas. Reg. § 1.501(c)(3)-1(c)(1); Zagfly, Inc. v. Commissioner of Internal Revenue, T.C. Memo 2013-29 (Jan 28, 2013).

In sum, you fail to meet both the organizational and operational requirements under § 1.501(c)(3)-1(a)(1). Therefore, you do not qualify for recognition of tax exemption under

§ 501(c)(3).

Conclusion

Based on the information you provided, we conclude that you do not qualify for tax-exempt status as an organization described under § 501(c)(3) because you operate for the primary purpose of carrying on an unrelated trade or business, a substantial non-exempt purpose.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send us a statement within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For an authorized representative:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. We'll review your protest statement and decide if you provided a basis for us to reconsider

our determination. You also have a right to a conference after you submit your statement. If you want a conference, you must request it when you file your protest statement.

You can also ask the Office of Appeals to review your application for tax-exempt status. Your right to request Appeals review is in addition to your right to a conference, as outlined in Revenue Procedure (Rev. Proc.) 2014-4 and Rev. Proc. 2014-9. You must notify us in writing if you want us to forward your case to the Appeals Office. You can find more information about the process and the role of the Appeals Office in Section 7 of Rev. Proc. 2014-9 and Publication 4227, *Overview of the Appeals Process*.

If the person representing you in this process is not an officer, director, trustee, or other official who is authorized to sign for the organization, he or she must file Form 2848, as explained above, and otherwise meet the requirements in Publication 216, *Conference and Practice Requirements*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, [any request for consideration by the Office of Appeals,] Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Street address for delivery service:

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Michael Seto
Manager, EO Technical

Enclosure: Publication 892

cc: